



City of Austin

Law Department

City Hall, 301 West 2nd Street, P.O. Box 1088
Austin, Texas 78767-1088
(512) 974-2268

Writer's Direct Line
(512) 974-2159

Writer's Fax Line
(512) 974-6490

August 19, 2010

Ron Ellis (MC-160)
Texas Commission on Environmental Quality (TCEQ)
P.O. Box 13087
Austin, Texas 78711-3087

RE: TCEQ Request for Comments in Advance of Rulemaking Relating to
SB 3 Environmental Flow Requirements

Dear Mr. Ellis:

We appreciate this opportunity to comment early in the rulemaking process and staff's effort to outline key issues for consideration.

The SB 3 process is just beginning in the Colorado River Basin. However, as some of the rulemaking may set a precedent for other basins, the City of Austin wanted to take the opportunity now to comment. We understand that there will also be an opportunity to comment during the formal rulemaking process expected to start this fall, as well as a chance later on to address issues particular to the Colorado Basin through the SB 3 process.

A handout provided by Commission staff at the August 12, 2010 HB 3/SB 3 Environmental Flows Stakeholder Meeting requested input on 5 issues. Issue 3 asks:

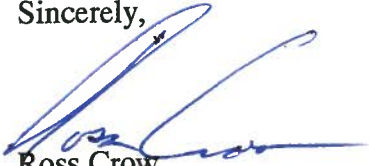
"How should amendment applications that do not request a new appropriation of water, but would require environmental flow restrictions be treated? Would the standards apply to these types of applications?"

In each basin, Commission staff will receive water rights applications on a wide variety of projects. The City believes that it is not practical to apply the full suite of environmental flow standards to each new water right or water rights amendments that might trigger environmental requirements under Texas Water Code section 11.122. Therefore we recommend that staff retain flexibility in the applying environmental flow standards in order to address specific water rights and their potential impacts, rather than developing standards which must be applied in the same manner in each instance without the ability to consider what would be most appropriate in a particular circumstance.

The addition of a diversion point a short distance upstream of currently authorized diversion points may, for example, have a very minimal environmental impact that, as a practical matter, may require little or no mitigation. Again, we suggest that in drafting the rules staff provide itself with the latitude necessary to develop permit conditions relating to environmental flows on a case-by-case basis.

Thank you for your consideration of these comments.

Sincerely,



Ross Crow
Assistant City Attorney

cc: Rudy Garza, Assistant City Manager, City of Austin
Greg Meszaros, Director, Austin Water Utility
Teresa Lutes, Managing Engineer, Austin Water Utility